

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

MICHAEL STRAUSBAUGH, : **CIVIL ACTION NO. 1:15-CV-1433**

:
Plaintiff : **(Chief Judge Conner)**

:
v. :

GREENTREE SERVICING LLC, et al., :

:
Defendants :

ORDER

AND NOW, this 27th day of September, 2018, upon consideration of the report (Doc. 98) of Magistrate Judge Karoline Mehalchick, recommending that the court grant defendants' motions (Docs. 51, 54, 56) to dismiss the second amended complaint (Doc. 49) filed by *pro se* plaintiff Michael Strausbaugh ("Strausbaugh") pursuant to both Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6), and further recommending that dismissal be without leave to amend as amendment would be futile, (see Doc. 98), and the court noting that Strausbaugh filed an objection (Doc. 101 at 1-26) to the report, in addition to several supporting exhibits, (see id. at 27-62; Doc. 103), in accordance with Federal Rule of Civil Procedure 72(b)(2), see FED. R. CIV. P. 72(b)(2), and following a *de novo* review of the contested portions of the report, see Behar v. Pa. Dep't of Transp., 791 F. Supp. 2d 383, 389 (M.D. Pa. 2011) (citing 28 U.S.C. § 636(b)(1)(C); Sample v. Diecks, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989)), the court finding Judge Mehalchick's extensive analysis to be thorough, well-reasoned, and fully supported by the record and decisional law, and finding

Strausbaugh's objection (Doc. 101) to be without merit and squarely addressed by the report,¹ it is hereby ORDERED that:

1. The report (Doc. 98) of Magistrate Judge Mehalchick is ADOPTED.
2. The motions (Docs. 51, 54, 56) to dismiss are GRANTED.
3. Strausbaugh's second amended complaint (Doc. 49) is DISMISSED in its entirety as follows:
 - a. All claims against defendants KML Law Group P.C. ("KML"), Jill P. Jenkins ("Attorney Jenkins"), David Fein ("Attorney Fein"), Green Tree Servicing LLC ("Green Tree"), Lori Hogue ("Hogue"), and James Anthony ("Anthony"), to the extent they are brought pursuant to the court's diversity jurisdiction under 28 U.S.C. § 1332, are DISMISSED with prejudice for lack of subject matter jurisdiction.
 - b. Alternatively, all federal law claims against Hogue, to the extent they are brought pursuant to the court's federal question jurisdiction under 28 U.S.C. § 1331, are DISMISSED with prejudice for failure to state a claim for which relief may be granted, and all remaining state law claims against KML,

¹ One objection in particular bears separate response by the court.

Judge Mehalchick acknowledges the principle that federal courts dismissing civil rights claims generally should grant leave to amend unless amendment would be futile. (See Doc. 98 at 25-26). She notes that Strausbaugh has twice amended his complaint—once in response to an initial report and recommendation authored by Judge Mehalchick and once on his motion—and neither amendment cured the pleading deficiencies. (See id.) Strausbaugh objects to this recommendation. He asseverates that he was never notified—by defendants or the court—of the option to amend his pleading to cure the deficiencies identified in the first report or in defendants' motions. This assertion is flatly contradicted by the record. In his objections to Judge Mehalchick's first report and recommendation, Strausbaugh expressly requested leave to amend his pleading—and he invoked the leading Third Circuit case concerning amendment in civil rights cases in doing so. (See Doc. 32 at 11 (citing Grayson v. Mayview State Hosp., 293 F.3d 103 (3d Cir. 2002))). The undersigned granted that request and authorized Strausbaugh to amend his pleading in response to Judge Mehalchick's report. (Doc. 33). Accordingly, we reject Strausbaugh's suggestion that he has not been previously notified of or granted the opportunity to amend his pleading.

Attorney Jenkins, Attorney Fein, Green Tree, Hogue, and Anthony are DISMISSED without prejudice to Strausbaugh's ability to refile these claims in state court pursuant to 28 U.S.C. § 1367(c)(3).

4. Strausbaugh's motion (Doc. 76) for sanctions is DENIED and Strausbaugh's miscellaneous remaining motions (Docs. 90, 95) are DENIED as moot.
5. The Clerk of Court is directed to CLOSE this case.

/S/ CHRISTOPHER C. CONNER
Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania